



[10191/2020]

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES**

Inventors : Bernd PETZOLD et al.
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**APPELLANTS' APPEAL BRIEF
UNDER 37 C.F.R. § 41.37**

S I R :

Applicants filed a Notice of Appeal dated February 18, 2010 (received at the PTO on February 22, 2010), appealing from the Final Office Action dated September 22, 2009, in which claims 16-19, 22-25 and 27-29 of the above-identified application were finally rejected. This Appeal Brief is being submitted by Applicants in support of their appeal.

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I. REAL PARTY IN INTEREST

The real party in interest in the present appeal is Robert Bosch GmbH of Stuttgart, Germany. Robert Bosch GmbH is the assignee of the entire right, title, and interest in the present application.

II. RELATED APPEALS AND INTERFERENCES

No appeal or interference which will directly affect, or be directly affected by, or have a bearing on, the Board's decision in the pending appeal is known to exist to the undersigned attorney or is believed by the undersigned attorney to be known to exist to Applicants.

III. STATUS OF CLAIMS

Claims 16-19, 22-25 and 27-29 are currently pending in the present application. Claims 1-15, 20-21, 26 and 30-36 have been canceled. Claims 16-19, 22-25 and 27-29 are rejected and are being appealed. Among the appealed claims, claim 25 is independent, and claims 16-19, 22-24 and 27-29 depend on claim 25.

IV. STATUS OF AMENDMENTS

No Amendment has been made subsequent to the final rejection mailed on September 22, 2009.

V. SUMMARY OF CLAIMED SUBJECT MATTER

With respect to independent claim 25, the present invention provides a navigational system (Fig. 1 – system 1), which system includes:

a calculation unit (Fig. 1 – unit 400) configured to calculate a first route (Fig. 6 – route 5) from a starting point (Fig. 6 – point S) to a destination (Fig. 6 – point Z), the calculation unit (400) further configured to calculate at least one second route (Fig. 6 – route 10) different from the first route (5), from the starting point (S) to the destination (Z); (Original Specification, p. 5, l. 5-6; p. 6, l. 21-25);

a reproducing device (Fig. 1 – device 700) configured to reproduce the calculated first route (5) and the at least one second route (10) for selection by a user; (p. 5, l. 9-11 & 17-18; p. 6, l. 32-34; p. 7, l. 4-5); and

a communications unit (Fig. 1 – unit 1000) configured to receive information regarding traffic disruptions on the calculated first route (5) and the at least one second route (10), the reproducing device (700) configured to reproduce the information regarding the traffic disruptions; (p. 5, l. 21-25); and

an input device (Fig. 1 – input unit 600) configured to enable the user to manipulate or change at least one of the reproduced first and second routes by enabling the user to mark user-selected road segments on the reproducing device, the manipulated or altered routes including the user-selected road segments being selectable by the user (using selection unit 900 shown in Fig. 1) for route guidance (p. 7, l. 35 – p. 8, l. 15).

VI. GROUND OF REJECTION TO BE REVIEWED ON APPEAL

The following ground of rejection is presented for review on appeal in this case:

(A) Whether pending claims 16-19, 22-25 and 27-29 are unpatentable under 35 U.S.C. § 103(a) as obvious over U.S. Patent No. 5,911,773 ("Mutsuga") in view of U.S. Patent No. 5,982,298 ("Lappenbusch").

VII. ARGUMENTS

A. Rejection of Claims 16-19, 22-25 and 27-29 under 35 U.S.C. § 103(a)

Claims 16-19, 22-25 and 27-29 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,911,773 ("Mutsuga") in view of U.S. Patent No. 5,982,298 ("Lappenbusch"). Applicants respectfully submit that the rejection should be withdrawn for at least the following reasons.

In rejecting a claim under 35 U.S.C. § 103(a), the Examiner bears the initial burden of presenting a *prima facie* case of obviousness. In re Rijckaert, 9 F.3d 1531, 1532, 28

U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). To establish a *prima facie* case of obviousness, the Examiner must show, *inter alia*, that there is some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify or combine the references, and that, when so modified or combined, the prior art teaches or suggests all of the claim limitations. M.P.E.P. §2143. In addition, as clearly indicated by the Supreme Court, it is “important to identify a reason that would have prompted a person of ordinary skill in the relevant field to [modify] the [prior art] elements” in the manner claimed. See KSR Int’l Co. v. Teleflex, Inc., 82 U.S.P.Q.2d 1385 (2007). In this regard, the Supreme Court further noted that “rejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *Id.*, at 1396. To the extent that the Examiner may be relying on the doctrine of inherent disclosure in support of the obviousness rejection, the Examiner must provide a “basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristics necessarily flow from the teachings of the applied art.” (See M.P.E.P. § 2112; emphasis in original; see also Ex parte Levy, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990)).

Independent claim 25 recites, in relevant parts, “a calculation unit configured to calculate a first route from a starting point to a destination, the calculation unit further configured to calculate at least one second route different from the first route, from the starting point to the destination; a reproducing device configured to reproduce the calculated first route and the at least one second route for selection by a user; . . . [and] an input device configured to enable the user to manipulate or change at least one of the reproduced first and second routes by enabling the user to mark user-selected road segments on the reproducing device, the manipulated or altered routes including the user-selected road segments being selectable by the user for route guidance.” The claimed limitations at issue require the following: (1) calculating and displaying at least two different routes between the starting point and the destination; and (2) enabling the user to manipulate or change at least one of the reproduced first and second routes by marking user-selected road segments such that the manipulated or altered routes including the user-selected road segments are selectable by the user for route guidance.

In support of the rejection, the Examiner contends in the Final Office Action that “Mutsuga discloses an input device configured to enable the user to input data to manipulate

or change the routes that is selected for guiding the user to travel from a starting point to a destination (see Figures 16-19).” Furthermore, while the Examiner acknowledges that Mutsuga fails to disclose enabling “the user to mark user-selected road segments on the reproducing device, the manipulated or altered routes being selectable by the user for route guidance,” the Examiner contends in the Final Office Action that “Lappenbusch discloses an interactive traffic display and trip planner in which the input device which is the cursor control key is used to change at least one selected route by enabling the user [to] mark the selected road (see column 6, lines 14-37).” However, Applicants note that the actual disclosures of the applied prior art simply do not suggest the claimed features, as explained in detail below.

First, to the extent the Examiner contends that “Mutsuga discloses an input device configured to enable the user to input data to manipulate or change the routes that is selected for guiding the user to travel from a starting point to a destination (see Figures 16-19),” Mutsuga does not teach or suggest the actual claimed limitation which requires manipulating or changing one of the previously calculated and reproduced first and second routes between the starting point and the destination; instead, Mutsuga merely teaches that the user may select desired route searching conditions to identify the optimal route that includes a desired facility on the way to the destination, but there is simply no suggestion in Mutsuga that previously calculated and reproduced route may be manipulated or changed.

Second, to the extent the Examiner contends that “Lappenbusch discloses an interactive traffic display and trip planner in which the input device which is the cursor control key is used to change at least one selected route by enabling the user [to] mark the selected road (see column 6, lines 14-37),” the disclosure of the applied prior art is fundamentally unrelated to the claimed limitation which requires manipulating or changing one of the previously calculated and reproduced first and second routes between the starting point and the destination; instead, the cited portion of Lappenbusch merely discloses that road segments may be highlighted by moving the cursor control, for which highlighted road segments the current traffic description is provided, but the highlighting described in Lappenbusch has nothing to do with manipulating or changing one of the previously calculated and reproduced first and second routes between the starting point and the destination. In fact, the “trip planning mode” for calculating an optimal route between the starting point and the destination is described in a completely separate section of Lappenbusch, i.e., col. 7, l. 11-39, and there is no suggestion in any section of Lappenbusch that one of the previously calculated and

reproduced routes between the starting point and the destination may be manipulated or altered by the user's marking of selected road segments.

To the extent the Examiner contends on p. 4 of the Final Office Action that it would be obvious to “modify the navigation system as taught by Mutsuga et al. to include the cursor control key as described in Lappenbusch et al. in order to bring the user attention of the selected road among the other roads on a display device,” this contention has absolutely no relevance to the present claimed invention, i.e., merely bringing “the user attention of the selected road among the other roads on a display device” does not in any way relate to the present claimed feature of **manipulating or changing one of the previously calculated and reproduced first and second routes** between the starting point and the destination. At best, the highlighting of a road section as described in Lappenbusch merely serves to provide additional information about the highlighted road section, e.g., traffic description for the highlighted road section. (Col. 6, l. 23-20). Accordingly, even if one assumes for the sake of argument that there is some motivation to combine the teachings of Mutsuga and Lappenbusch, the overall teachings of Mutsuga and Lappenbusch cannot possibly suggest the present claimed feature of **manipulating or changing one of the previously calculated and reproduced first and second routes** between the starting point and the destination.

In view of the foregoing explanation, Applicants submit that the overall disclosure of Mutsuga and Lappenbusch simply cannot support the obviousness rejection of independent claim 25. Accordingly, the rejection of claim 25 and its dependent claims 16-19, 22-24 and 27-29 should be reversed.


VIII. CONCLUSION

For the foregoing reasons, it is respectfully submitted that the final rejections of claims 16-19, 22-25 and 27-29 should be reversed.

Claims Appendix, Evidence Appendix and Related Proceedings Appendix sections are found in the attached pages.

Respectfully submitted,

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APPENDIX TO APPELLANTS' APPEAL BRIEF
UNDER 37 C.F.R. § 41.37

CLAIMS APPENDIX

The claims involved in this appeal, claims 16-19, 22-25 and 27-29, in their current form after entry of all amendments presented during the course of prosecution, are set forth below:

16. The navigational system according to claim 25, further comprising:

a selection unit configured to enable the user to select one of the reproduced routes; and

a route guidance unit configured to generate navigational information for a position between the starting point and the destination on the selected route and to transmit the navigational information to the reproducing device for reproduction.

17. The navigational device according to claim 25, wherein the calculated first route and at least one second route are reproduced on the reproducing device as a function of at least one predefined route criterion.

18. The navigational system according to claim 17, wherein at least one of a traffic jam probability, travel time, speed, route distance, fuel consumption, and regions through which calculated routes should not travel is one of: specified as the at least one predefined route criterion via an input unit, or fixed as the at least one predefined route criterion.

19. The navigational system according to claim 17, wherein a weighting of the at least one route criterion is one of: specified via an input unit, or fixed.

22. The navigation system according to claim 25, wherein the information regarding traffic disruptions includes information regarding traffic flow.

23. The navigational system according to claim 25, wherein the reproducing device is configured to reproduce the information regarding the traffic disruptions in conjunction with the calculated first route and the at least one second route.

24. The navigational system according to claim 25, wherein the reproducing device is configured to reproduce the information regarding the traffic disruptions separately from the reproduction of the calculated first route and the at least one second route.

25. A navigational system, comprising:

a calculation unit configured to calculate a first route from a starting point to a destination, the calculation unit further configured to calculate at least one second route different from the first route, from the starting point to the destination;

a reproducing device configured to reproduce the calculated first route and the at least one second route for selection by a user;

a communications unit configured to receive information regarding traffic disruptions on the calculated first route and the at least one second route, the reproducing device configured to reproduce the information regarding the traffic disruptions; and

an input device configured to enable the user to manipulate or change at least one of the reproduced first and second routes by enabling the user to mark user-selected road segments on the reproducing device, the manipulated or altered routes including the user-selected road segments being selectable by the user for route guidance.

27. The navigational system according to claim 25, further comprising:

a selection unit configured to enable the user to select one of the reproduced routes,

wherein the calculation unit is configured to calculate at least one additional route which differs from the selected route, the at least one additional route starting from an instantaneous position as a new starting point to the destination, in response to receiving information regarding a traffic disruption on the selected route.

28. The navigational system according to claim 25, wherein the communications unit is further configured to receive information regarding a type of traffic disruption, and the reproducing device is configured to reproduce the type of traffic disruption.

29. The navigational system according to claim 25, wherein the reproduction is configured to at least one of optically and acoustically reproduce.

EVIDENCE APPENDIX

In the present application, there has been no evidence submitted pursuant to 37 C.F.R. §§ 1.130, 1.131 or 1.132, or other evidence entered by the Examiner and relied upon by Appellant in the present appeal.

RELATED PROCEEDINGS APPENDIX

No appeal or interference which will directly affect, or be directly affected by, or have a bearing on, the Board's decision in the pending appeal is known to exist.